

(1986) 01 AHC CK 0045

In the Allahabad High Court

Case No : Writ Petition No. 1557 of 1985 (H.C.)

Ram Prasad Chaudhary

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 16-01-1986

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3, 5A

Citation : AIR 1987 All 169 : (1986) AWC 198

Hon'ble Judges : S.C. Mathur, J;K.S. Varma, J;G.B. Singh, J

Bench : Full Bench

Advocate : Virendra Bhatia and P.K. Punhani, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.S. Varma, J.—This writ petition has been referred to us for decision in pursuance of an order dated 20-11-1985 passed by a Division Bench of this Court consisting of Hon"ble S. S. Ahmad and Hon"ble Brijesh Kumar, JJ. In order to appreciate the circumstances in which the petition has been referred to this Full Bench, facts will have to be stated in detail.

2. The petition has been filed by Ram Prasad Chaudhary against his detention under the National Security Act, 1980 (hereinafter to be referred to as the Act). The order of detention is dated 3-2-1985 and is Annexure 1 to the petition. The ground, containing the reasons for detention are dated 3-2-1985 and have been filed as Annexure 2 to the petition. The petitioner's case is that he has been the President of D.M.K. Party and had contested the election to Lok Sabha in December, 1984 against Chandra Shekhar Tripathi, a Congress candidate. The petitioner was defeated in the election but, after the elections were over in December, 1984, he intended to contest Uttar Pradesh Assembly Election to be held in March, 1985. For this purpose he declared his intention to contest the election from Kaptanganj Constituency of District Basti. The petitioner further

stated that as soon as he came from Delhi on 5-2-1985 to file his nomination papers from Kaptanganj Constituency, he was arrested at Basti and sent to jail and was served with the detention order under the National Security Act. As stated earlier, Annexure 1 is the detention order. Annexure 2 is a copy of the grounds of detentions and the documents which were supplied to him. The petitioner's case is that he was previously detained under the provisions of National Security Ordinance, 1980 on 11-1-1982 but the detention order was revoked on the advice of the Advisory Board and he was released from jail on 27-2-1982. The petitioner further states that a perusal of the grounds of detention reveals that the first ground mentioned in the grounds of detention relates to an incident dated 3-3-1981 which gave rise to Crime No. 31 of 1981. The incident relating to Crime No. 31 of 1981 which is ground No. 1 in the present detention order was also one of the grounds for his previous detention under the provisions of the Act vide detention order dated 3-8-1981. The grounds of previous detention order are filed as Annexure 3 to the Writ Petition. A perusal of Annexures 2 and 3 indicates that ground No. 6 of the previous detention order contained in Annexure 3 is ground No. 1 of the present detention order dated 3-2-1985. The petitioner's case is that as the Advisory Board quashed his detention in regard to the incident dated 3-3-1981, the said ground is irrelevant for the purpose of his second detention. In regard to ground No. 2 of the detention order, the petitioner's case is that one Ram Ugrah Singh lodged a first information report in respect of incident dated 20-1-1985 which was registered as Crime No. 18 of 1985. The petitioner's case is that Ram Ugrah Singh is not an eye-witness to the murder case of Gomti Singh and it has been falsely alleged in the first information report that he was a witness in the case. A true copy of the first information report regarding the murder of Gomti Singh is filed as Annexure 4 to the writ petition to prove that Ram Ugrah Singh was not a witness in that case. The contention of the petitioner is that the incident dated 20-1-1985 does not, in any manner, affect the public order and, therefore, the detention on that ground is liable to be set aside. In regard to third ground which relates to an incident dated 31-1-1985 which gave rise to Crime No. 15 of 1985, the petitioner's case is that it has been initiated due to political rivalry. In regard to third ground Ram Tej, who was informant in the case, has filed an affidavit in the Court of Judicial Magistrate, Basti stating that he never lodged any report against the petitioner. According to the petitioner, the police authorities had coerced Ram Tej to sign a blank paper and he never lodged any first information report against the petitioner. The petitioner contends that even if this ground is taken as it is, it does not, in any way affect public order and the order of detention is liable to be quashed. The petitioner further contends that the District Magistrate passed the order of detention without considering the fact that he was previously detained under the Act and the detention was revoked on the advice of the Advisory Board. This fact was also not considered by the State Government either at the stage of passing the detention order or at the stage of confirming the order of detention. The detention order passed against the petitioner was approved on 3-2-1985 and the same was confirmed by the State

Government on the advice of the Advisory Board on 25-3-1985. A copy of the confirmation order is Annexure 5 to the writ petition. The petitioner's case is that the confirmation order passed by the State Government indicates that the fact that he was detained earlier was not taken into consideration by the State Government. In regard to ground No. 2, it is also maintained that it is similar to the one in previous detention order and this fact was also not considered either by the District Magistrate at the time of passing the detention order nor was it considered by the State Government while approving and confirming the detention order. The main ground in the writ petition is that the District Magistrate passed the detention order in an arbitrary manner and all the relevant material was not considered either by the District Magistrate or by the State Government. On these facts the petitioner prayed that the detention of the petitioner be quashed on the ground that the fact that he was previously detained and the detention order was revoked on the advice of the Advisory Board was not considered by the District Magistrate or by the State Government. The detention order is also challenged on the ground that the facts indicated in Annexure 2 do not make out a case of public order and, therefore, the petitioner's detention is illegal. The order was also challenged on the ground that ground No. 2 was intimately related to ground No. 1 and since ground No. 1 related to an incident dated 3-3-1981, grounds Nos. 1 and 2 are liable to be ignored as they are stale grounds.

3. The petition was opposed by the State of Uttar Pradesh and two counter-affidavits were filed on behalf of the opposite parties. One affidavit is filed by Shri S.W. Yadav on behalf of opposite party No. 1 and another affidavit has been filed by Shri D. D. Sharma who was District Magistrate, Basti at the time when the detention order was passed. In the counter-affidavit filed by Shri D. D. Sharma, he denied that the petitioner has been detained in collusion with the police under the Act. He has also stated that the detention of the petitioner is bona fide and the order of detention has been passed by him after applying his mind to the documents which were supplied to the petitioner along with the grounds of detention. The District Magistrate has admitted in his reply to paragraph 13 of the petition that ground No. 6 of detention order dated 3-8-1981 is the same as ground No. 1 of detention order dated 3-2-1985. In that connection he also states that the detention order dated 3-8-1981 was revoked by the State Government after the receipt of a report by the Advisory Board. It has also been stated that there is no legal bar according to which ground No. 6 of the detention order dated 3-8-1981 could not be made a ground of detention order dated 3-2-1985. The District Magistrate has further stated that after having examined the grounds mentioned in the detention order in respect of the incidents dated 20-1-1985 and 31-1-1985 which are grounds Nos. 2 and 3 of the grounds of detention order, he was satisfied that the detention order was legal as the material which has already been supplied to the petitioner revealed that on account of the incidents referred to as grounds Nos. 2 and 3, panic was created in the locality and shutters were pulled down and the public was terrorised on

account of firing by the petitioner. He stated that on the material supplied to the petitioner, he was satisfied that the grounds related to public order and the said incidents adversely affected the public order and in order to prevent the petitioner from indulging in activities prejudicial to law and order, he passed the detention order and detained the petitioner under the Act. The paragraph 19 of the counter-affidavit, the District Magistrate has stated that "the deponent passed the detention order against the petitioner on 3-2-1985 after consideration of relevant material, including previous history of the petitioner. It is not disputed that earlier detention order dated 3-8-1981 was revoked by the State Government. In paragraph 20 of the counter-affidavit he has stated as follows : --

"It is stated that the deponent had duly considered the question of previous detention of the petitioner while passing of the detention order dated 3-3-1985."

In paragraphs 27 and 28 of the petition, the petitioner had stated that the detention order was passed without considering the fact that he was previously detained under the Act. It was further stated that the detention order was revoked on the advice of the Advisory Board and this fact was not considered by the State Government either at the stage of approving the detention order or at the stage of confirming the same, Shri S. W. Yadav, an Upper Division Assistant in the Civil Secretariat, in his counter-affidavit has stated that the contents of the aforesaid paragraphs of the petition are not relevant in so far as the order of detention dated 3-2-1985 was concerned.

4. This writ petition came up for hearing before a Division Bench consisting of Hon"ble S. S. Ahmad and Hon"ble Brijesh Kumar, JJ. The Hon"ble Judges after a detailed order have referred the case to a larger Bench. The necessity for referring the case to a larger Bench arose as the learned Judges took the view that the decision rendered by this Court in Writ Petition No. 3196 of 1984, Om Prakash Gupta v. State of Uttar Pradesh and Ors., decided on 18-9-1984 needed reconsideration. The Hon"ble Judges have indicated in the referring order reasons for disagreeing with the view taken in Om Prakash Gupta's case referred to above, and have observed that on account of the amendment of the Act by the Amendment Act No. 60 of 1984, Section 5A was added which provided that if a person was detained in pursuance of an order of detention I whether made before or after the commencement of the National Security (Second Amendment) Ordinance, 1984) u/s 3 which has been made on two or more grounds such order of detention shall be deemed to have been made separately on each of such grounds. It was contended on behalf of the petitioner that if the detention order failed on one of the grounds, the entire detention order would collapse as in such an eventuality it will not be clear as to which part of the order influenced the authority concerned to pass the detention order. This argument was built on the basis of several decisions of the Supreme Court which took the view that if the detention order fails on one ground then the entire detention order would have to be set aside. In order to meet this argument, it was contended by the opposite parties that even if the detention of the petitioner in

respect of the incident dated 3-8-1981 was revoked on the report by the Advisory Board, the order of detention could be sustained on grounds Nos. 2 and 3 by resort to Section 5A of the Act as amended by Act No. 60 of 1984. The Hon"ble Judges referred the case to a larger Bench on the basis of observations made by this Court in Writ Petn. No. 1518 of 1985, Raghuvendra Singh v. Superintendent, District Jail, Kanpur and others decided on 21-8-1985. The Hon"ble Judges constituting the Bench in Raghuvendra Singh's case observed that the plea of the State of U.P. based on Section 5A of the Act was sustainable. After a detailed discussion the Hon"ble Judges held that in view of the Supreme Court decision, the Division Bench decision can no longer be treated as laying down good law.

5. A perusal of the referring order indicates that the Hon"ble Judges referring the case to a larger Bench were of the view that observations made in Raghuvendra Singh's case were in conflict with Om Prakash Gupta's case and they, accordingly, formulated the following question for consideration of the larger Bench :--

"In a case where relevant material in respect of one of the several grounds of detention is not placed or considered by the State Government while considering the question of approval u/s 3(4) or while considering the question of confirmation u/s 12 of the Act, would such non-consideration vitiate the order of detention passed on other surviving grounds as well in respect of which no relevant fact or material has been left out of consideration by the State Government."

The Hon"ble Judges further observed that in order to avoid any delay in disposal of the petition the Full Bench may dispose of the whole petition on merits considering other grounds as well.

6. It is in these circumstances that the instant writ petition has come up for hearing before this Bench. In order to appreciate the controversy between the parties it would be appropriate to scrutinise the provisions of Section 5A of the Act which reads as follows : --

"5-A. Grounds of detention severable.--Where a person has been detained in pursuance of an order of detention (whether made before or after the commencement of the National Security (Second Amendment) Ordinance, 1984) u/s 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each such grounds and, accordingly,-- (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are-- (i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever and it is not, therefore, possible to hold that the Government or Officer making such order would have satisfied as provided in Section 3 with reference to the remaining ground or grounds."

A close scrutiny of the above provisions would indicate that in case a detention order has been made on two or more grounds such an order of detention shall be deemed to have been made separately on each such ground and such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds are vague or invalid.

7. What has to be seen in the instant case is as to what is the effect of the word "deemed". The expression "deemed" is used in a number of statutes for a variety of purposes. One of the purpose is to give extended operation to a rule which cannot be given to it without the deeming clause. The expression "deemed" is used a great deal in many modern statutes and for many purposes. It is at times used to give a special glossary or paraphrase to an expression or an artificial construction to word or phrase, if is at times used to introduce artificial conceptions which are intended to go beyond settled legal principles. The word is also used to give extended or restricted operation to a rule which cannot be given to it if it be read as enacted. While using the word "deemed" in statutes the Legislature lays down a rule the extent and operation of which, according to ordinary canons of construction, would be confined to a particular class and the intention is that the rule should have wider extent and embrace more than what it states. In such a case the language of the rule notwithstanding the operation and extent of it is widened by the deeming provisions.

8. A deeming provision postulates that a thing deemed to be something is not, in fact, the thing it is deemed to be. When a thing is deemed to be something, it is to be treated as that thing though, in fact, it is not. A deeming provision creates a legal fiction. The effect of such a fiction is that a position which would otherwise not obtain, is deemed to obtain. Reference in this connection may be made to AIR 1930 54 (Privy Council) . The word "deemed" was interpreted by Viscount Dunedin as follows : --

"When a person is "deemed to be" something the only meaning possible is that whereas he is not in reality that something, the Act requires him to be treated as if he were."

9. The principle enunciated by the Privy Council referred to above was approved by the Supreme Court in K. Kamaraja Nadar Vs. Kunju Thevar and Others, . According to the said decision a deeming provision creates a legal fiction and the effect of such a legal fiction is that a position which otherwise would not obtain is deemed to obtain under these circumstances. The word "deemed" again came up for consideration before the Supreme Court in The Additional Income Tax Officer, Salem Vs. E. Alfred, , The Court held that when a thing is deemed to be something else, it is to be treated as if it is that thing though, in fact it is not. The aforesaid decision of the Privy Council was considered by a Division Bench of

this Court in *Narain Bux Singh v. State of UP*, 1981 All LJ 649.

10. If we analyse the provisions of Section 5A of the Act in the light of the interpretation placed on the word "deemed" it appears that although a detention order made on two or more grounds is one detention order but for the purposes of the Statute it shall be deemed to be an order of detention made separately on each of such grounds. Normally, if a detention order contains two or more grounds, it is treated as one order having several grounds. The Legislature enacts a legal fiction where by although two or more grounds are incorporated in one detention order, in the eye of law it will be taken that a separate detention order has been passed in respect of each ground. The effect of the deeming clause is that if one of the grounds contained in the detention order fails, the detention order can be justified on other grounds contained in the detention order. Prior to the amendment in the National Security Act by Act No. 60 of 1984, the legal position was that if the order of detention was bad on one out of several grounds the whole detention order failed as it could not be said to what extent the invalid ground influenced the mind of the detaining authority. On the coming into force of the Amendment Act on 31-8-1984, it is apparent that if several grounds of detention are contained in one detention order, it would be taken that separate detention order has been passed in respect of each of the grounds.

11. It may be noted that Section 5A of the Act as it stands in the National Security Act is to be found in the same form in Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter to be referred to as COFEPOSA). Section 5A of the COFEPOSA came up for consideration before the Supreme Court in *State of Gujarat Vs. Chamanlal Manjibhai Soni*, . The provisions of Section 5A of National Security Act are the same as Section 5A of COFEPOSA. In that case, Section Murtaza Fazal Ali, J. observed as follows : --

"What the Act provides is that where there are a number of grounds of detention covering various activities of the detenu spreading over a period or periods, each activity is a separate ground by itself and if one of the grounds is irrelevant, vague or unspecific, then that will not vitiate the order of detention. The reason for enacting Section 5A was the fact that several High Courts took the view that where several grounds are mentioned in an order of detention and one of them is found to be either vague or irrelevant then the entire order is vitiated because it cannot be predicated to what extent the subjective satisfaction of the authority could have been influenced by the vague or irrelevant ground. It was to displace the basis of these decisions that the Parliament enacted Section 5A in order to make it clear that even if one of the grounds is irrelevant but the other grounds are clear and specific (then) that by itself would not vitiate the order of detention."

The observations of the Supreme Court completely demolish the argument of the petitioner that the detention order in the instant case is liable to be quashed in spite of Section 5A of the Act.

12. Section 5A of the COFEPOSA was also interpreted by the Supreme Court in *Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others*, . Hon"ble S. Mukharji quoted Section 5A in paragraph 70 and in paragraph 71, the learned Judge observed as follows : --

"Section 5A stipulates that when the detention order has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly that if one irrelevant or one inadmissible ground had been taken into consideration that would not make the detention order bad."

13. In *Taluqdar Khan v. State of U.P. and Ors.*, (Writ Petition No. 5368 of 1984) decided by a Division Bench of this Court on 17-4-1984 it was contended on behalf of the petitioner that the whole order of detention would be vitiated due to non-application of mind in respect of one ground. This contention was repelled by the Division Bench in the following words : --

"In view of the provisions added by way of Section 5A of the National Security Act the order of detention can be sustained as if it has been passed separately on each ground despite the fact that grounds Nos. 2, 3, 5 and 7 fail."

While dealing with this aspect of the matter, the learned Judges at a later stage observed as follows : --

"We are afraid this contention of the petitioner is not sustainable. True the order of detention cannot be sustained on ground No. 2 as indicated in the earlier part of the judgment but, in our opinion, that will not affect the order of detention if it is sustainable on other grounds. Section 5A of the National Security Act is very clear in this regard."

14. In Writ Petition No. 3120 of 1984 (*Santosh Kumar v. State of U.P.*) decided on 31-8-1984 : (reported in 1986 Cri LJ 557) is a case under the COFEPOSA. A perusal of the judgment indicates that the detention order was passed in respect of several incidents. The Hon"ble Judges while deciding the case held that the detention order in so far as it was based on incident relating to Lalman was vitiated but the judges observed that there was another incident on the basis of which also the petitioner was ordered to be detained and that was the recovery of smuggled watches from Ram Kishan. This was the second ground of detention. By reference to Section 5A of the Act, the Hon"ble Judges observed : --

"In view of the provisions of Section 5A of the COFEPOSA even if one of the grounds was held to be valid, relevant and germane, the detention order could be upheld. That being so, this second ground has to be examined."

Ultimately, the ground was examined but the detention order was quashed on the ground that the material piece of evidence connecting the petitioner with the second incident had not been supplied to the petitioner and on that account it was held that the order of detention was illegal. It is, however, clear that the Division Bench relied upon Section 5A of the Act.

15. At this stage, it may be stated that the Division Bench which referred this case to a large Bench doubted the correctness of the decision rendered in Writ Petition No. 3196 of 1984 decided on 18-9-1984. In this connection it would be appropriate to state the facts of Om Prakash Gupta's case (Writ Petition No. 3196 of 1984) in detail. Om Prakash Gupta was detained under the National Security Act in respect of four incidents. One of the incidents related to an incident which took place on 18-8-1983 and in that regard it was stated that the petitioner along with certain other persons including one Ranjeet Srivastava entered into a conspiracy to commit the murder of Chandar Pal Dwivedi, an operator in the Telephone Exchange, Barabanki. In pursuance of the conspiracy an armed assault was made on Chandar Pal Dwivedi in which hand grenades were also used. In consequence of this assault Sri Dwivedi was injured and later he died. In regard to incidents Nos. 2, 3 and 4 details were given in the grounds and they related to commission of various crimes in which the petitioner was involved. It was contended on behalf of the petitioner that Ranjit Srivastava was also detained and one of the grounds for his detention was the same as ground No. 1 in Om Prakash Gupta's case. The detention of Ranjit Srivastava had been revoked on the basis of the report of the Advisory Board. The order relating to Ranjit Srivastava was passed on 21-11-1983 much before the detention order was passed in respect of Om Prakash Gupta and it was confirmed after the report by the Advisory Board. The argument of the learned counsel for Om Prakash Gupta was that one of the grounds of detention in case of the petitioner and in the case of Ranjit Srivastava was common. Ranjit Srivastava had been released and his detention order was revoked on the report of the Advisory Board. According to the learned counsel for the petitioner this fact had not been taken into consideration by the State and that at the time of passing and confirming the detention order, necessary procedural safeguards had been violated. According to the learned counsel for Om Prakash Gupta, his detention was liable to be set aside on the ground that one of the grounds in the case of the petitioner and Ranjit Srivastava was common and that ground was not considered by the Advisory Board to maintain the detention of Om Prakash Gupta. On the other hand, it was contended on behalf of the State that the ground which was common in the case of Ranjit Srivastava and the petitioner was separable and in fact it was a separate ground in the grounds of detention. However, in view of the amendment of the Act and introduction of Section 5A in the Act, the detention order could be held valid if one or some of the grounds were relevant and survived for sustaining the detention order. In this connection, the Division Bench consisting of B. C. Deo Sharma and Kamleshwar Nath, JJ. referred to the decision of the Supreme Court in Mohd. Shakeel Wahid Ahmed Vs. State of Maharashtra and Others, . In the said case there were several grounds of detention out of which one ground was common in the case of Mohammad Shakeel and Shamsi. Shamsi was also detained but had been released on the report of the Advisory Board. The Supreme Court held that except the ground which was common with Shamsi, all other grounds were held to be irrelevant and, consequently, the only ground which survived was the one

which was common to the petitioner and Shamsi. On these facts, the Supreme Court held that the non-consideration of Shamsi's revocation order in the case of the petitioner Mohammad Shakeel vitiated his further detention. The Division Bench in regard to Shakeel Wahid Ahmed's case (*supra*) observed as follows : --

"On facts, however, that case may be distinguishable with the one before us. There the only surviving ground was the one which was common with the petitioner and Shamsi whereas in the case before us there are three other grounds even if one which was common with the petitioner and Ranjeet Srivastava is kept out of consideration because of the revocation of the detention order of Ranjeet Srivastava. The important aspect of the decision, however, is that the consideration of the release of a co-detenu on a common ground was considered essential while passing a detention order."

The Division Bench further observed as follows : --

"The further question which is for consideration before us is whether non-consideration of the fact of release of co-detenu on a common ground only vitiates the ground or further vitiates the detention. If it only vitiates the ground, Section 5A of the National Security Act will come into operation and the remaining three grounds could be fallen back upon to sustain the detention order. If the release of the co-detenu was "relevant for consideration of the detention order itself, then non-consideration thereof would not only vitiate the common ground, but also the detention order itself and Section 5A of the National Security Act would not protect it."

The Division Bench then considered the applicability of Section 3(4) and Section 12 of the Act. After discussing the applicability, of the aforesaid sections, the Division Bench observed that the release of a co-detenu was a relevant circumstance which affects not only the grounds of detention but also the order of detention. The exact observations may be quoted as follows : --

"We have already pointed out that it is a relevant circumstance which affects not only the ground for detention but also the order of detention."

In regard to Section 5A of the Act the Division Bench observed :

"Section 5A of the Act only saves the grounds of detention other than the grounds which are found to be invalid; it does not save the detention order itself."

16. Before the Division Bench reliance was placed upon *Santosh Kumar v. State of U.P.*, (Writ Petition No. 3120 of 1984) decided on 31-8-1984 : (reported in 1986 Cri LJ 557). By reference to that decision it was contended that by resort to Section 5A of the Act, the detention order would be sustained on other grounds mentioned in the detention order. The Division Bench in *Om Prakash Gupta's* case distinguished that decision on the ground that the observations were in the nature of obiter dicta. The Division Bench after recording a finding that the detention order was invalid as in respect of ground No. 1 constitutional and procedural safeguards had not been observed. The detention order was quashed

on that ground. A perusal of Om Prakash Gupta's case would indicate that the decisions rendered by the Supreme Court based on Section 5A of the Act were not brought to the notice of the Division Bench and the detention order was quashed on account of non-observance of constitutional and procedural safeguards provided by the Constitution of India and the National Security Act. On 18-9-1984 Writ Petition No. 31% of 1984 filed by Om Prakash Gupta was allowed and on 22-9-1984 by another order he was detained under the National Security Act. This detention order was challenged by Om Prakash Gupta in Writ Petition No. 5534 of 1984. The writ petition was dismissed by a Division Bench consisting of Hon"ble Kamleshwar Nath and Hon"ble Parmeshwar Dayal, JJ. by order dated 21-12-1984 : (reported in 1985 All LJ 1331). A perusal of the judgment indicates that on the basis of Section 5A of the Act, the detention of the petitioner was upheld. The Division Bench discussed the import of Section 5A of the Act in detail and held that the detention of Om Prakash Gupta was valid as the detention order could be upheld on the grounds other than those which had failed. It has to be noticed that Kamleshwar Nath, J. was a member of the Division Bench which decided the earlier Om Prakash Gupta's case (Writ Petition No. 3196 of 1984) and was also a member of the Bench deciding the latter writ petition filed by him (Writ Petition No. 5534 of 1984).

17. One Raghuvendra Singh alias Chhotey Raja challenged his detention order dated 10-2-1985 by means of Writ Petition No. 1518 of 1985. The petition came up for hearing before a Division Bench consisting of Hon"ble S. C. Mathur and Hon"ble Brijesh Kumar, JJ. The petition was decided on 21-8-1985. One of the contentions raised in Raghuvendra Singh's case was that since one out of four grounds of detention has been found to be valid, the writ petition has to be dismissed in view of Section 5A of the Act. The Division Bench after discussing the scope of Section 5A of the Act in detail dismissed the writ petition by order dated 21-8-1985. The judgment rendered in Om Prakash Gupta's case (Writ Petition No. 31% of 1984 decided on 18-9-1984) was relied upon by the petitioner. While rejecting the plea of the State based on Section 5A the Division Bench in Om Prakash Gupta's case observed as follows :--

"Even though the Court will not quash the detention order on the ground that any one or more of the grounds of detention were irrelevant or not germane or otherwise bad in law but still the safeguards have to be observed.... The Statutory and Constitutional safeguards, therefore, have to be observed despite Section 5A of the Act. The obligation to consider all the relevant material at the time of passing the order u/s 12(1) read with Section 3 of the Act seems to be one such safeguard."

The Division Bench in Raguvendra Singh's case observed as follows in respect of the observation quoted above : --

"The above view is in conflict with the view expressed by their Lordships of the Supreme Court whose obiter dicta is also binding on this Court. The above view cannot, therefore, be followed. It may be pointed out that while Ajai Dixit's case

was decided on Ajay Dixit Vs. State of U.P. and Others, the Division Bench of this Court decided Om Prakash Gupta's writ petition on 18-9-1984. In view of the Supreme Court decision, the Division Bench decision can no longer be treated as laying down good law."

From what has been observed by the Division Bench in Raghuvendra Singh's case it appears that Section 5A of the Act will be available to sustain detention order if such an order is sustainable on grounds other than those on which the detention order cannot be sustained.

18. On a perusal of the two decisions of Om Prakash Gupta's case, it would be apparent that the decisions of the Supreme Court in Ajai Dixit's case and other cases under COFEPOSA were not brought to the notice, of the Division Bench. The said cases were taken note of by the Division Bench in Raghuvendra Singh's case and I am of the view that having regard to the principles laid down by the Supreme Court, the said Division Bench was right in observing that the decision in Writ Petition No. 3196 of 1984 is no longer good law. It is further to be noticed that in second Om Prakash Gupta's case, Kamleshwar Nath, J, who was a party to the earlier Bench, sustained the detention order by resort to Section 5A of the Act. I am, accordingly of the view that if the detention order has been passed on several grounds and if one of the grounds fails then the detention order can be sustained on other grounds provided the constitutional and statutory safeguards are observed in confirming the detention order on the said grounds.

19. In State of Gujarat Vs. Chamanlal Manjibhai Soni, and Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, their Lordships of the Supreme Court have already observed that Section 5A of the Act relates to grounds of the detention order. If one of the grounds fails the detention order can be sustained on other grounds provided the procedural safeguards provided for in the National Security Act have been observed.

20. This brings us to the question whether the detention of the petitioner can be sustained on three grounds indicated in Annexure 2 of the writ petition. The first ground relates to an incident which took place on 3-3-1981. The incident took place in the year 1981 and this incident was also the subject-matter of detention in Annexure 3 which is a detention order passed against the petitioner on 3-8-1981. It is not disputed between the parties that detention order was quashed on the recommendation of the Advisory Board and by means of Annexure 2 dated 3-2-1985 this incident was also included as one of the grounds for detention.

21. So far as ground No. 1 is concerned it is very old and in the words of the Hon'ble Supreme Court such a ground is "certainly stale and not available to be used in an order of detention." In the instant case ground No. 1 is of the year 1981 and the detention order was passed in 1984. In view of the principles enunciated by the Supreme Court in Ramesh Yadav Vs. District Magistrate, Etah and Others, it has to be held that ground No. 1 is stale and is not available for

passing an order of detention. Rang Nath Misra, J. in the above noted case observed as follows : --

"Five grounds were indicated of which four are referable to specific incidents. Of these four, three are of 1980, prior to the making of the previous order of detention. They are certainly stale and not available to be used in an order of detention of 1984."

22. For the reasons stated above, I am of the view that ground No. 1 is stale and cannot be made basis of detention.

23. In regard to incident dated 20-1-1985 our attention has been drawn to a certified copy of the judgment rendered in Sessions Trial No. 156 of 1985. The judgment indicates that the petitioner was committed to the Court of Session u/s 307 of the I.P.C. in respect of the incident dated 20-1-1985 referred to in Annexure 2 to the writ petition. By order dated 4-11-1985 the learned Sessions Judge recorded a finding that after consideration of evidence produced by the prosecution, the prosecution totally failed to prove the case and the learned Sessions Judge concluded that there was no evidence worth the name on record to warrant the conviction of the petitioner u/s 307 of the Penal Code. A perusal of the judgment rendered by the Sessions Judge indicates that the prosecution produced witnesses 1 to 4 who were said to be eye witnesses of the incident, implicating the petitioner u/s 307 of the Penal Code.

The learned Sessions Judge has observed that the said witnesses totally denied the prosecution case and stated that they had not seen any incident. The finding recorded by the Sessions Judge is that the prosecution witnesses stated that they did not know whether Ram Prasad fired on the complainant. The judgment also indicates that prosecution witnesses were declared hostile and did not support the prosecution case and the learned Sessions Judge held that the case u/s 307 of the Penal Code was not made out.

24. In the instant case in respect of incident No. 2 dated 20-1-1985 a regular trial was held by the Sessions Judge and the prosecution witnesses did not support the case put forward by it; the prosecution failed against the petitioner on account of want of evidence. The contention is that in view of this finding, it cannot be said that the incident as is stated as ground No. 2 in Annexure 2 ever really happened. The argument is that it will be treated that the incident was nonexistent as there was no evidence to prove that such an incident took place. In my opinion, in view of the finding recorded by the Sessions Judge in Sessions Trial No. 156 of 1985, it cannot be said that the incident referred to in Annexure 2 at serial No. 2 is an incident which really took place. This being the position it is not possible to uphold the detention order on ground No. 2.

25. Ground No. 3 in Annexure 2 relates to an incident dated 31-1-1985. Learned counsel for the petitioner placed before us certified copy of the judgment in Sessions Trial No. 749 of 1985 in which the petitioner was prosecuted for offences punishable under Sections 394, 353, 504 and 506 of the Penal Code.

The trial was in respect of ground No. 3 of Annexure 2. A perusal of the judgment rendered by the Sessions Judge clearly indicates that the prosecution witnesses failed to support the prosecution case and on that account the petitioner was acquitted in the case. For the reasons that I have already indicated in respect of ground No. 2, the detention order cannot be sustained in respect of incident No. 3 also.

26. From what has been observed above, it is obvious that in respect of incidents Nos. 2 and 3 mentioned in Annexure 2, the case was taken for trial before Courts. The Courts held that the prosecution failed to prove the cases. The result of the findings recorded by the Sessions Courts is that the incidents such as are alleged never took place. The learned counsel for the petitioner strenuously contended that since the petitioner has been acquitted in respect of the two remaining charges the detention of the petitioner cannot be continued.

27. On behalf of the petitioner reliance has been placed on Rameshwar Lal Patwari Vs. State of Bihar, . The case was under the Preventive Detention Act, 1950. The detention order was passed on a number of grounds and one of the grounds related to a pending case in which the appellant was said to be on bail. Subsequently, the appellant was tried for the offence and acquitted. The said ground was made a ground of detention and Hidayatullah, J. while dealing with this aspect observed as follows : --

"The fourth ground speaks of a pending case in which the appellant is said to be on bail. The grounds were furnished in July, 1967. The appellant was tried for the offence and acquitted as far back as February, 1967.

This ground discloses carelessness which is extremely disturbing.....

If the appellant was tried and acquitted, Government was required to study the judgment of acquittal to discover whether all these allegations had any basis in fact or not. One can understand the use of the case if the acquittal was technical but not when the case was held to be false."

28. The underlined portions of quotation clearly indicates the view of the Supreme Court that if the order of acquittal passed, in favour of the detenu is found to be based on charges which have not been substantiated on regular trial then that incident cannot be made the basis of grounds of detention.

29. The petitioner also placed reliance on Ramesh Yadav Vs. District Magistrate, Etah and Others, and the observation of Rang Nath Misra, J. quoted as follows : --

"The only other incident which was subsequent to the quashing of the previous detention and which may have some nexus with the present order of detention is of 1983. Admittedly, a trial had taken place and there has been acquittal. That ground, therefore, was not available to be used."

30. In my opinion, the facts of the instant case attract the principles enunciated by Supreme Court in Rameshwar Lal Patwari Vs. State of Bihar, and in Ramesh

Yadav v. District Magistrate, Etah 1985 SCC (Cri) 514 : AIR 1968 SC 315 (supra). Rang Nath Misra, J. has clearly observed that if the incident which is the basis of detention had ended in acquittal then that incident cannot be available to be used as the basis of detention. In the instant case the facts are slightly different. In respect of the two surviving incidents no trial was initiated to start with but during the detention period the said two incidents were enquired into in regular trials and finding recorded was that the incidents such as alleged by the prosecution were not proved and the prosecution failed to establish that the incidents actually took place. In principle there is no difference. If the incidents, in respect of which the detention order has been passed has already ended in acquittal before passing of the detention order, detention order is liable to be quashed on that account. The same would be the position if the incidents are, to start with, not the subject-matter of trial but during detention order the incidents are enquired into by regular trial and are held to be false or the prosecution fails to prove the incidents by reliable evidence. In either case the only conclusion derivable is that such incidents cannot be made the basis of detention.

31. On the other hand the learned counsel for the State relied upon Haradhan Saha Vs. The State of West Bengal and Others, and laid emphasis on the following observations of Ray, C. J. : --

"The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable possibility of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case a person is punished to prove (sic) on (on proof of ?) his guilt and the standard of proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in Section 3 of the Act to prevent."

32. The learned Additional Government Advocate has further relied upon the following observations of Ray, C. J. at page 2160 : --

"The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal."

33. On the basis of the observations referred to above the learned Additional

Government Advocate contended that the mere fact that the detenu has been acquitted after trial will not be sufficient to quash the detention order. The contention is that even if the petitioner has been acquitted, the proper course for the detenu is to approach the State Government for revoking the order of detention on the ground of acquittal.

34. The next decision to which reference was made by Additional Government Advocate is *Kanchanlal Maneklal Chokshi Vs. State of Gujarat and Others*, . A perusal of this decision would indicate that the earlier decision rendered by the Supreme Court in *Haradhan Saha Vs. The State of West Bengal and Others*, along with other cases were considered in detail and the Supreme Court observed as follows : --

"The principles emerging from a review of the above cases may be summarised in the following ways. The ordinary criminal process is not to be circumvented or short-circuited by ready resort to preventive detention. But, the possibility of launching a criminal prosecution is not an absolute bar to an order of preventive detention."

35. The Supreme Court after applying the principles summarised above held that the order of detention did not suffer from any infirmity and was accordingly upheld. I have examined the line of reasoning indicated by the Additional Government Advocate with the attention it deserves. It is, however, not possible to agree with his contention on the ground that in the instant case in respect of the two remaining incidents regular trial was held and it was found by the Sessions Judge that the incidents such as were alleged by the prosecution were not proved. In the face of this finding it cannot be said that the incidents such as are alleged by the State actually took place or the happening of the incident was supported by reliable evidence. In this situation the conclusion is inescapable that the grounds which have been made the basis of the detention do not exist and the detention order is liable to be quashed.

36. The learned Additional Government Advocate by reference to the authorities referred to above contended that the discharge or acquittal of an accused does not necessarily mean that the grounds on which the detention is sought to be maintained is non est and has to be ignored. The principle deducible from the authorities cited on behalf of the parties is that if in a regular trial the finding recorded is that the incident such as is alleged is not supported by any evidence then it will be taken that no such incident took place. I have already indicated above the findings recorded by the Sessions Judges in respect of incidents Nos. 2 and 3. They have categorically held that the prosecution has failed to establish the prosecution story. The consequence of such a finding is that there will be no material on record on which it can be stated that incidents Nos. 2 and 3 mentioned in Annexure 2 really took place. Ground No. 1 is stale and cannot be treated as valid ground for detention and in respect of grounds Nos. 2 and 3 the Court in regular trials have held that there was no reliable evidence on the basis of which it could be said that incidents Nos. 2 and 3 took place. The case against

the petitioner in respect of grounds Nos. 2 and 3 failed and the petitioner was acquitted of the charges levelled against him.

37. For the reasons stated above, the writ petition is allowed and the detention order of the petitioner dated 3-2-1985 is quashed. He shall be released forthwith unless he is detained in respect of any other incidents under the National Security Act.

S.C. Mathur, J.

38. I have gone through the judgment prepared by my learned brother Hon''ble K. S. Varma, J. and I agree with the findings recorded by him. I would, however, like to make a few observations of my own.

39. The question which has been referred to this Full Bench, as formulated by the Division Bench, is as follows : --

"In a case where relevant material in respect of one of the several grounds of detention is not placed or considered by the State Government while considering the question of approval u/s 3(4) or while considering the question of confirmation u/s 12 of the Act, would such non-consideration vitiate the order of detention passed on other surviving grounds as well in respect of which no relevant fact or material has been left out of consideration by the State Government."

Another way of expressing the question is as follows : --

"Whether an order of detention passed u/s 3 of the National Security Act, 1980 which is based on several grounds will be invalid and fall in entirety if one or some of the grounds only is or are found to be illusory or irrelevant, although the remaining ground or grounds does or do not suffer from any such infirmity."

40. Answer to the above question depends on the interpretation to be placed on Section 5A incorporated in the Act through National Security (Amendment) Ordinance No. 6 of 1986 which came into effect on 21st June, 1984. The ordinance was replaced by Act 60 of 1984 which came into force on 31st August, 1984. This section reads as follows :--

""5-A. Where a person has been detained in pursuance of an order of detention (whether made before or after the commencement of the National Security (Second Amendment) Act, 1984). u/s 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly : -- (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are :.--

(i) Vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reasons whatsoever, and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in Section 3 with reference to the remaining ground or grounds and made the order of detention :

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds."

41. Necessity for incorporating this section arose from the fact that in several decisions it was held that if an order of detention was passed on several grounds and one or more of the grounds was or were found to be invalid the entire order became invalid. The basis for this view was that in the said eventuality it was not possible to predicate the extent of influence exercised by invalid ground on the mind of the detaining authority on whose subjective satisfaction the order of detention was required to be passed. The Legislature, obviously, intended to undo the effect of these decisions when it added Section 5A to the Act. We may now examine the ingredients of the new provision. Sub-clauses (i) to (iv) of Clause (a) deal with specific infirmities in the ground which may render a ground invalid. Sub-clause (v) covers all species of infirmities. Thus, Section 5A covers all species of defects which may render a ground of detention invalid. The opening paragraph of Section 5A provides that where an order of detention has been made on two or more grounds such an order of detention shall be deemed to have been made separately on each of such grounds. Connotation of the word "deemed" has been elaborately dealt with by my learned brother and I agree with the observations made by him. Section 5A therefore, creates a fiction. It says that although there may be only one order of detention passed on two or more grounds there will be deemed to be as many orders of detention as are the grounds in support thereof. An order of detention survives or falls on the strength or weakness of its own ground and not on the strength or weakness of the grounds contained in any other order or orders. Now, in view of the fiction created each ground will have to be examined separately and if the order of detention can be sustained on any one of the several grounds it will have to be upheld on the basis of that ground, even though the other grounds may be invalid for whatsoever reasoning. Clause (b) specifically provides that order of detention shall be deemed to have been made by the detaining authority after being satisfied with reference to the remaining ground or grounds. Accordingly, it is no longer possible to quash an order of detention which is based on several grounds on the ground that one or more of the grounds is or are invalid provided there is at least one ground which is valid.

42. My learned brother Varma, J. has rightly observed that in Writ Petition No. 3196 of 1984, *Om Prakash Gupta v. State of U.P.*, Division Bench presided over by Hon"ble R. C. Deo Sharma, J. (as he then was) has not laid down law to the contrary. However, while dealing with this case, I, in *Raghvendra Singh alias*

Chhotey Raja v. Superintendent, District Jail, Kanpur, Writ Petition No. 1518 of 1985 decided on 21-8-1985 reproduced certain observations contained in the judgment in Om Prakash Gupta's case and commented upon the same. The passage from the judgment in Om Prakash Gupta's case which has been reproduced in Raghavendra Singh's case, is as follows : --

".....Even though the Court will not quash the detention order on the ground that any one or more of the grounds of detention were irrelevant or not germane otherwise bad in law still the safeguards have to be observed. The statutory and constitutional safeguards, therefore, have to be observed despite Section 5A of the Act. The obligation to consider all the relevant material at the time of passing the order, u/s 12(1) read with Section 3 of the Act, seems to be one such safeguard."

After reproducing this passage I observed thus-- "The above is in conflict with/ the views expressed by their Lordships of the Supreme Court whose obiter dicta is also binding on this Court. The above view cannot, therefore, be followed."

43. The judgment of the Supreme Court to which reference has been made by me is in Ajay Dixit Vs. State of U.P. and Others, . The facts of Om Prakash Gupta's case have been stated in detail by my learned brother. From those facts it will be seen that the detention order passed against Om Prakash Gupta was based on several grounds and one of the grounds related to an occurrence in which Om Prakash Gupta was alleged to be a co-accused with Ranjit Srivastava who was also detained u/s 3 of the Act. Detention order passed against Ranjit Srivastava was revoked. The argument raised on behalf of Om Prakash Gupta was that the revocation of the order of detention passed against Ranjit Srivastava was a relevant fact which should have been considered by the detaining authority which passed the order of detention against him. Division Bench of this Court upheld this plea and quashed the order of detention on the basis that the revocation of the previous order of detention affected not only the ground which was common in both the detention orders but also the order. With this view of the Division Bench, I did not agree. My opinion was that since the other grounds were independent of the invalid ground and they did not suffer from any infirmity the order was sustainable. It is in this context that I made the observation that the view taken in Om Prakash Gupta's case was contrary to Supreme Court view and could not, therefore, be followed. Indeed an ordinary legislature cannot frame a law which will have the effect of overriding constitutional provisions. As such, the Division Bench in Om Prakash Gupta's case was correct in observing that the constitutional safeguards will have to be observed despite Section 5A of the Act. Section 5A does not override other provisions of the Act. Accordingly, requirements of other provisions of the Act will also have to be fulfilled. The said Division Bench was, therefore, correct in observing also that statutory safeguard too will have to be observed despite Section 5A. I, therefore, clarify that the observation made by me in Raghvendra Singh's case regarding Om Prakash Gupta's case was based on the facts of the

latter case and not on the proposition of law contained in the portion extracted in my judgment. I still hold the view, with utmost respect to the learned Judges who decided Om Prakash Gupta's case, that non-consideration of the revocation of the detention order passed against Ranjit Srivastava affected only the ground arising from the occurrence in which both were co-accused. The other grounds were independent of the said occurrence, and, therefore, in my opinion, the entire order was not rendered invalid.

44. Now, there may be a detention order which is based on several grounds but all the grounds are inter-related and are not severable. In such a case, the entire detention order will have to be held invalid once one of the grounds which cannot be severed from the other grounds, is found to be illusory, non-existent or invalid for any reason whatsoever. As against this, there may be a detention order based on an occurrence which has given rise to other occurrences, which are also made grounds of detention but they are independent of the first occurrence. The main occurrence may be stale and therefore may not be available for being made a ground for detention u/s 3 but on that account it cannot be held that the subsequent occurrences which have also been made grounds for detention and which are not stale and are severable, cannot be availed of for passing an order of detention.

45. Sri Bhatia, learned counsel for the petitioner, has strenuously pressed that petitioner's previous detention under the order dated 3-8-1981 and the revocation of that order are matters related to procedural safeguards and therefore, non-consideration thereof renders the entire order invalid. The argument is valid only for the first two grounds. The two grounds were inter-related. The cause for the occurrence mentioned in the second ground would arise only if the informant Ram Ugrah was in fact such a witness whose testimony could tilt the decision of the case mentioned in the first ground one way or the other. For this purpose it was necessary for the District Magistrate to consider the factum of previous detention and revocation thereof. The argument is, however, not valid for the third ground which is independent of the first and second grounds. However, in the present case, even the third ground has become invalid on account of the judgment of acquittal passed after trial. Despite the judgment of acquittal, an occurrence which was the subject-matter of trial, may be available for preventive detention, but that would be when the detaining authority asserts that the trial ended in acquittal because the witnesses were terrorised by the detenu and on account of the terror spread by him fair trial was not possible and is not possible in respect of the cases still pending against him. That, however, is not the plea of the opposite parties in the present case.

46. With this explanatory note I agree that the petition deserves to be allowed and the impugned order of detention dated 3-2-1985 contained in Annexure No. 1 is liable to be quashed.

K.S. Varma, J.

47. I have gone through the judgment prepared by my learned brother S. C. Mathur, J. and I agree with the elaboration made by him.

G.B. Singh, J.

48. I have gone through the judgment prepared by my, learned brother Hon"ble K. S. Varma, J. and I agree with the conclusions arrived at by him. I have also gone through the elaboration made by my brother Hon"ble S. C. Mathur, J. and I agree with the same.